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In The

Supreme Court of the United States

October Term, 1983

JAMES REDDING, et al.,

Petitioners,

vs.

JAMES FAIRMAN, et al.,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Consolidated causes 79-231
Nos. 79-2217, 79-2304, 80-2132, 80-2013,
79-2310, 80-2108, 80-2152

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JAMES REDDING, et al.,

Plaintiffs,

vs.

JAMES FAIRMAN, et al.,

Defendants.

ORDER

(Filed December 1, 1981)

The seven plaintiffs in these consolidated cases are or have been inmates at the Pontiac Correctional Center in Pontiac, Illinois. They filed claims under 42 U. S. C. § 1983 alleging that certain actions of the Adjustment Committee, which is the disciplinary board at Pontiac, violated the plaintiffs' fourteenth amendment right to procedural due process. The seven cases were consolidated on the court's own motion under Fed. R. Civ. P. 42(a) since each case presented one or a combination of the following questions of law: (1) Was it a denial of due process to permit a person to sit as a member of the Adjustment Committee, when that person was a defendant in a pending civil rights action filed by the plaintiff and the plaintiff was a respondent before the Adjustment Committee? (2) Was the statement by the Adjustment Committee of the evidence relied upon and the reasons for the disciplinary action taken against the plaintiff constitutionally inadequate and a denial of due process? (3) Was the plaintiff's limited right to call witnesses at the Adjustment Committee hearing curtailed in such a way as to constitute a denial of due process?[1]

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[1]In their second amended complaint, plaintiffs allege that their placement "without a constitutionally legitimated finding of a violation of prison regulations" in dirty cells which lacked certain basic amenities abridged the plaintiffs' eighth amendment right to be free from cruel and unusual punishment. The procedures followed by the Adjustment Committee here raise due process questions only. The conditions of the plaintiffs' confinement may be relevant to the question of what damages were suffered by the plaintiffs as a result of any due process violation.

The plaintiffs and the defendants have filed cross-motions for summary judgment under Fed. R. Civ. P. 56. Under Rule 56, a motion for summary judgment will be granted only when the pleadings and evidentiary materials submitted by the parties reveal that there is no "genuine issue" regarding any "material fact" and that the movant is entitled to judgment as a matter of law. The following facts bearing on the plaintiffs' claims appear undisputed.

I. *James Redding*

On November 19, 1979, the plaintiff received a disciplinary report in which he was cited with violations of Administrative Regulation (A.R.) 804 (II)(A)(1) (disobeying any order from any institutional employee or any prison rule), (13) (forging or altering a pass), and (14) (giving false information to an employee). Specifically, the disciplinary report charged the plaintiff with forging Officer Richard K. Overocker's name on a medical pass.

The disciplinary report issued to the plaintiff included the following paragraph:

> Please be advised that you have the right to appear before the Adjustment Committee and contest this rule violation charge by presenting a written or oral statement or explanation of your actions. You may present to the Committee relevant physical exhibits such as records or documents; you have a right to ask that witnesses be interviewed, and if necessary in the Committee's judgment, you may be called to testify during your hearing. In addition, you may ask the Committee to question the witness along lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed by filling out the appropriate space on this form, tearing it off, and returning it to the Committee. If you are illiterate or seriously handicapped, you may have the assistance

> of a staff counselor to help you prepare a defense. You may request a reasonable extension of time to prepare for your hearing. If you are found guilty of a serious rule violation and are found to be a danger to the institutional community, you may be placed in segregation and/or deprived of your current grade and statutory good time credit.[2]

Although the disciplinary report stated that witnesses must be requested in advance of the Adjustment Committee hearing, there is a factual question as to whether the plaintiff complied with this requirement.[3]

On November 21, 1979, Redding appeared before the Adjustment Committee on the above charges. The chairman of the three-member Committee was Captain Paul A. Hosier. Since Redding had a civil rights suit for damages pending in this court against Captain Hosier, Redding interposed an objection to Hosier's participation in the disciplinary hearing and requested that Hosier recuse (sic) himself in order to preserve the Committee's impartiatility (sic). Hosier refused the plaintiff's request.

The plaintiff then requested that a handwriting expert, Officer Overocker, and inmate Fisher, who according to Redding had witnessed the signing of his medical pass by Officer Overocker be called as a witness in the

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[2]The disciplinary reports issued to all of the plaintiffs contained the paragraph quoted above.

[3]Copies of the disciplinary report issued to Redding and submitted to the court do not indicate that the plaintiff detached and returned to the Adjustment Committee a written request for witnesses, but in his deposition, the plaintiff testified that he requested witnesses in writing and in advance of the Adjustment Committee hearing.

plaintiff's behalf, but this request was also denied. A notation on the Adjustment Committee summary, which is the written record of the Adjustment Committee proceedings, states that Officer Overrocker was not working at the institution on November 21, 1979. There is no indication in the record why the plaintiff's other requests for witnesses were denied.

At the conclusion of the Adjustment Committee hearing, the plaintiff was found guilty of all of the offenses charged and was sentenced to fifteen days in the segregation unit as well as demotion to C-grade status with loss of audio-visual privileges for thirty days. In recording the basis for its decision and the evidence relied upon, the Committee stated as follows:

> "All evidence presented has convinced the committee the resident is guilty of forging a pass or altering a pass, giving false information to a [sic] employee and disobeying a prison rule."

The Committee's finding of guilt and the punishment imposed was approved by Warden James Fairman on November 28, 1979, but on June 30, 1980, records of the purported violations were expunged from the plaintiff's master record file since Officer Overrocker later admitted that he had been mistaken that the plaintiff had forged his signature.

II. *Jamal Ali Akbar*

On January 10, 1980, Jamal Ali Akbar, a/k/a James Benson, received a disciplinary report alleging violations of A.R. 804(II)(A)(1) (disobeying any order from any institutional employee or any prison rule), (14) (giving false information to an employee), and (15) (passing or

receiving contraband from another resident, visitor and/or employee). Specifically, the plaintiff was charged with possession of gang-related materials and two "kites," which are unauthorized letters written from one prisoner to another.

Akbar appeared before the Adjustment Committee on January 13, 1980. Although Akbar did not request witnesses in writing in advance of the Adjustment Committee hearing[4] and the Adjustment Committee summary notes no oral request by Akbar for witnesses, the plaintiff alleges that at the hearing he requested that a witness be called and that his request was denied.

Captain Hosier, who was a defendant in a civil rights suit for damages filed by the plaintiff and pending on January 13, 1980, was chairman of the Adjustment Committee. Although the plaintiff objected that he could not receive a fair hearing if Captain Hosier remained on the Committee, Hosier stayed on the Committee. The Committee thereafter found Akbar guilty of violating A.R. 804(II)(A)(1) and (15), but not guilty of violating subsection (14). The Adjustment Committee stated that the evidence relied upon and the reasons for the disciplinary action taken were as follows:

> Based on resident's testimony and all evidence presented, the committee's convinced that resident is guilty of carrying kites and other unauthorized written material into the segregation unit and violated the trust in his law clerk position.

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[4]See the disciplinary report issued to the plaintiff on January 10, 1980. Plaintiff's Response to Defendants' Answer, Exhibit H (filed on April 22, 1980).

A disciplinary job transfer was imposed pursuant to the finding of guilt, but reports of the violations were expunged from the plaintiff's records on February 20, 1980 after Reverend Imam Khalilallah verified that the alleged gang-related materials in the plaintiff's possession were in fact religious materials.

III. *Donald Woodruff*

On November 27, 1979, the plaintiff Donald Woodruff was issued a disciplinary report for allegedly cursing and threatening an officer and disobeying an order to leave the yard. Violations of A.R. 804(II)(A)(1) (disobeying any order from any institutional employee or any prison rule) and (4) (swearing, cursing, or use of any other vulgar, abusive, insolent, threatening, or improper language toward any other resident or employee or indecency in language, action, or gesture at any time) were alleged.

The Adjustment Committee hearing on the above charges was held on November 29, 1979. Although the plaintiff did not request witnesses in advance of the Adjustment Committee hearing by detaching and returning the bottom portion of the disciplinary report to the Adjustment Committee, the plaintiff states that at the hearing he requested that Officer Hoss be called as a witness. The plaintiff's request was denied although the plaintiff in his deposition testified that Officer Hoss was outside the hearing room at the time the request was made.

The Adjustment Committee found the plaintiff guilty of the charges cited in the disciplinary report and sentenced the plaintiff to seven days in segregation, a demotion to C-grade status for thirty days, and loss of yard privileges for thirty days. The portion of the Adjustment

Committee summary in which the Committee is supposed to recount the basis for its decision and the evidence relied upon says as follows:

> "All evidence presented and residents testimony given has convinced the committee the resident is guilty of improper use of language, and disobeying a direct order."

IV. *Donald Jones*

The plaintiff Donald Jones was involved in a fight with another inmate named Rodriguez on November 27, 1979. Although the plaintiff contended and still contends, that on that date Rodriguez instigated the fight. The plaintiff was cited for violating A.R. 804 (II)(A)(1) (disobeying any order from any institutional employee or any prison rule), (2) (being disrespectful to any employee of the institution or to any person visiting the institution), and (5) assaulting an employee or resident or fighting with a resident or employee). The Adjustment Committee found the plaintiff guilty of the offenses charged and imposed a sentence of six months C-grade status with loss of audio privileges, six months in segregation and six months loss of good conduct time credit. The Committee identified the basis for its decision as follows:

> "All evidence presented and residents testimony given has convinced the committee the resident is guilty of striking a [sic] employee and or (resident) disrespecting a prison rule and order not to fight."

Warden Fairman reduced the punishment to be imposed on the plaintiff to ninety days C-grade status, placement in segregation, and loss of good conduct time credit.

V. *Paul William Tedder*

The plaintiff, Paul William Tedder, complains of the procedures followed at twelve different disciplinary committee proceedings which occurred during 1979 and during 1980.[5] Four of the defendants, Hosier, Shehorn, Santos, and Wheat, sat as members of the Adjustment Committee on some of the above dates, and refused to remove themselves from the Committee when Tedder appeared before the Committee. The refusal was despite Tedder's protests that the defendants were prejudiced against him because they were defendants in pending lawsuits filed by Tedder.

Tedder failed to request in writing in advance of any of the Adjustment Committee hearings at issue in this case that witnesses be called in his behalf. Tedder contends, however, that he made verbal requests for witnesses at seven of the hearings. Those requests were denied.

At all but one of his hearings before the Adjustment Committee, Tedder was found guilty of disciplinary infractions. Punishment was imposed as follows:

(1) August 10, 1979—For violating A.R. 804 (II)-(A)(1) and (3) (refusing properly authorized work and or housing assignments), a sentence of fifteen days in the segregation unit was imposed.

(2) September 30, 1979—For violating A.R. 804 (II)-(A)(1) and (3), a sentence of fifteen days in segregation plus fifteen days of C-grade status was imposed.

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[5]August 4, 1979; August 10, 1979; September 30, 1979; November 3, 1979; November 18, 1979; February 3, 1980; February 4, 1980; February 17, 1980; March 2, 1980; March 16, 1980; and twice on March 23, 1980.

(3) November 3, 1979—For violating A.R. 804 (II)-(A)(1), Tedder received fifteen days in segregation, fifteen days C-grade status, and loss of audio-visual privileges.

(4) November 18, 1979—For violating A.R. 804 (II)-(A)(1) and (3) a sentence of fifteen days segregation, fifteen days in C-grade status, and loss of audio-visual privileges was imposed.

(5) February 2, 1980—For violating A.R. 804 (II)-(A)(1), (2) (being disrespectful to any employee of the institution), and (4) (swearing, cursing, or use of any other vulgar, abusive, insolent, threatening language), the plaintiff was demoted to C-grade status for fifteen days.

(6) February 4, 1980—For violating A.R. 804 (II)-(A)(1) and (3), the plaintiff lost audio-visual privileges, was demoted to C-grade status for fifteen days, and was given fifteen days in segregation.

(7) February 17, 1980—For violating A.R. 804 (II)-(A)(1) and (3), the plaintiff received fifteen days in segregation, thirty days of C-grade status, and loss of audio-visual equipment.

(8) March 2, 1980—The plaintiff received the same sentence as was imposed on February 17, 1980.

(9) March 16, 1980—For violating A.R. 804 (II)-(A)(4) and (8) (committing a mutinous act, inciting to riot and/or general disturbance), the Adjustment Committee recommended a sentence of fifteen days in segregation, thirty days C-grade status, and loss of audio-visual privileges. The segregation time was reduced to seven days by Warden Fairman.

(10) March 23, 1980—For violating A.R. 804 (II)-(A)(1), (2), and (3), the plaintiff was assigned to segregation for fifteen days and demoted to C-grade status for fifteen days with loss of audio-visual privileges.

(11) March 23, 1980—The plaintiff received the same sentence as was imposed on February 17, 1980.

The reasons given for the disciplinary action taken on each of these dates and the statements of the evidence relied upon were as follows:

(1) August 10, 1979—"Based on all availble [sic] information presented to this committee, and residents testimony the committee is convinced resident is guilty of refusing to leave segregation."

(2) September 30, 1979—"Based upon all available information this committee believes resident guilty."

(3) November 3, 1979—"Based upon the evidence presented by the officer's report the resident of [sic] found guilty of refusing a new housing assignment and has thereby violated an institutional rule."

(4) November 18, 1979—"Based on resident's testimony and all evidence presented the Committee is convinced that resident is guilty of refusing to leave segregation."

(5) February 2, 1980—"Based upon the evidence presented we find the resident guilty of cursing and not doing what he was told."

(6) February 4, 1980—"Residents testimony given and all evidence presented has convinced the committee the resident is guilty of refusing proper housing assignment, cursing a [sic] officer.

(7) February 17, 1980—"Based on all evidence available, the Adjustment Committee is convinced the resident is guilty of refusing proper housing."

(8) March 2, 1980—"Based on all evidence available including the residents statements and the statement of the officer that Tedder did refuse to leave segregation, the Adjustment Committee is convinced the resident is guilty of refusing proper housing, and disregarding a prison rule."

(9) March 16, 1980—"Based on all available evidence including the fact the reporting officer does identify resident Tedder as using vulgar and abusive language the Adjustment Committee is convinced the resident is guilty of using vulgar language and creating a disturbance."

(10) March 23, 1980—"Based on all evidence available, including the reporting employees statements that the resident did refer to the employee as "you fuckers" and referred to Ms. Ruck as a "bitch whore," the Adjustment Committee is convinced the resident is guilty of disregarding a prison rule, disrespect, and using vulgar language."

(11) March 23, 1980—"Based on all evidence available, including the statement of the reporting officer that the resident refused to leave segregation, the Adjustment Committee is convinced the resident is guilty of refusing proper housing."

VI. *Melvin Nalls*

On March 14, 1980, plaintiff Nalls was charged in a disciplinary report with stabbing another inmate. The Adjustment Committee found the plaintiff guilty of violating A.R. 804(II)(A)(1), (5) (assaulting an employee or resident), (6) (leaving a cell, a place of assignment, or other appointed place without permission), (8) committing a mutinous act, inciting to riot and (or general disturbance), (10) (making or having possession of any kind of dangerous weapon), and (28) (violating the general laws of the State or Federal government)., The Committee sentenced the plaintiff to one year in the segregation unit, one year loss of good conduct time credit, one year demotion to C-grade status, and loss of audio-visual privileges. In the space reserved on the Adjustment Committee sum-

mary for the "basis for decision" and "evidence relied upon," the Committee noted:

> "Based on all evidence available, including the residents statements and the report from D. Polizzi indicating resident Nalls was observed in the shower room area at the gym and the fact that resident Jones A-15622 was assaulted, the Adjustment Committee is convinced that resident Nalls is guilty of assaulting another resident, creating a disturbance, unauthorized movement."

VII. *Jeffrey Armstrong*

On February 9, 1980, the plaintiff received a disciplinary citation which alleged that the plaintiff had cursed at a guard and grabbed his arm. Although "copies"[6] of the disciplinary report issued to the plaintiff and submitted to the court do not indicate that the plaintiff detached and returned a written request for witnesses to the Adjustment Committee, the plaintiff states in his deposition that he made such a written request. This request was denied, and the plaintiff was thereafter found guilty of violating A.R. 804(II)(A)(1), (2), (4), (5), and (6). A sentence of thirty days in the segregation unit and a demotion to C-grade status for six months was then imposed with the basis for the decision and the evidence relied upon given as follows:

> "Based on all available evidence including the residents statements, the Adjustment Committee is convinced the resident is guilty of disregarding a prison rule, disrespect, cursing, and assaulting an employee by grabbing the employees arm."

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[6]They may be copies of copies and not copies of the originals issued to Armstrong.

VIII. *Impartial Decisionmakers*

At some of the Adjustment Committee hearings where the plaintiffs, Redding, Akbar, and Tedder were found guilty of disciplinary infractions, one or more of the members of the Adjustment Committee were defendants in pending lawsuits for damages filed by the plaintiffs.[7] The question before the court is whether that circumstance subjected the plaintiffs to adjudication of their cases by a biased hearing officer and, consequently, to a denial of due process of law.

The Supreme Court has ruled that prisoners are entitled to certain minimal procedural safeguards before disciplinary sanctions for major misconduct can be imposed. *Wolff v. McDonnell*, 418 U. S. 539 (1974). In *Wolff*, however, the Court held that an Adjustment Committee made up of the Associate Warden, the Correctional Industries Superintendent, and the Reception Center Director did not present "such a hazard of arbitrary decisionmaking" that a due process violation resulted. *Id.* at 571. When this hazard can occur in the prison disciplinary context has not been specified by the Supreme Court.

The Seventh Circuit Court of Appeals, however, affirmed the decision of a district court that due process re-

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[7]The court takes judicial notice of the following suits in which money damages were sought from some of the defendants: *Redding v. Franzen*, No. 79-2204, which was filed in this court; *Akbar v. Fairman*, No. 79-2207, filed in this court; *Tedder v. Fairman*, No. 79-MR-44, filed in the Circuit Court of Livingston County, Illinois; *Tedder v. Fairman*, No. 80-MR-22, filed in the Circuit Court of Livingston County, Illinois; *Tedder v. Fairman*, No. 80-MR-72 filed in the Circuit Court of Livingston County, Illinois; and *Tedder v. Fairman*, No. 80-MR-160 filed in the Circuit Court of Livingston County, Illinois.

quires a hearing before a "neutral and detached" person before an inmate can be transferred to a control unit for administrative reasons. *Bono v. Saxbe*, 620 F. 2d 609 (7th Cir. 1980) *aff'd*, 450 F. Supp. 934 (E.D. Ill. 1978) and 462 F. Supp, 146 (E.D. Ill. 1978). If a hearing before a "neutral and detached" party is necessary before certain types of administrative action affecting a prisoner can be taken, then it follows that a disciplinary hearing, which may result in segregation or a substantially longer term of incarceration through loss of good conduct time, must be held before "neutral and detached" decisionmakers. The committee members at least should not be defendants in pending lawsuits for damages instituted by the very persons over whom the committee sits in judgment.

There is a natural suspicion that prison officials who sit on Adjustment Committees will be biased in favor of reporting officers and against prisoners. But when a member of the Adjustment Committee is also a defendant in a suit for damages[8] filed by the prisoner appearing before the Committee, that suspicion of bias and arbitrary action[9] rises to the level of a reasonable expectation. Given the adversary relationship of the hearing officer and the inmate the right to a neutral and detached decisionmaker has not been satisfied and a denial of due process has occurred. The court therefore concludes that the plaintiffs, Redding, and Akbar, sufferred violations of their consti-

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[8]The court need not decide the question of whether a due process violation occurs when a member of the Adjustment Committee is a defendant in a suit for injunctive relief only.

[9]The Supreme Court observed in *Wolff v. McDonnell* that "[t]he touchstone of due process is protection of the individual against arbitrary action of government." Id. at 558.

tutional right to due process of law at the Adjustment Committee hearings at issue in this case and that plaintiff Tedder's rights were violated at the hearings held on August 10, 1979, September 30, 1979, November 3, 1979 and February 4, 1980.[10]

IX. *Constitutional Adequacy of the Adjustment Committee Summaries*

Each of the plaintiffs contends that his constitutional right to due process of law was violated when he was given only cursory statements of the evidence relied upon by the Adjustment Committee in reaching its determinations of guilt. The plaintiffs also point out that no statement of the Committee's reasons for the disciplinary action taken was given in any case. In *Wolff v. McDonnell,* 418 U.S. 539, 564 (1974), the Supreme Court held that due process entitles an inmate in a prison disciplinary proceeding to a "written statement by the fact-finders as to the evidence relied on and reasons" for the disciplinary action taken. This procedural safeguard protects the prisoner from adverse "collateral consequences" arising from misinterpretations of the nature of the disciplinary proceeding. It also ensures, by facilitating judicial review, that prison officials will act fairly. *Id.* at 565.

In *Hayes v. Walker,* 555 F.2d 625 (7th Cir. 1977), the Court of Appeals for the Seventh Circuit addressed

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[10]No proof has been submitted to the court confirming or refuting the fact that the plaintiff had a lawsuit pending against defendant Hosier at the time the plaintiff appeared before the Adjustment Committee on November 18, 1979. Summary judgment on the plaintiff's due process claim for that date cannot therefore be entered.

the question of the constitutional adequacy of an Adjustment Committee summary. In *Hayes* the report stated: "The Committee's decision is based on the violation report as written and upon the report by the special investigator which during your absence was made part of the record." The Court of Appeals held that this statement, which merely referred to the disciplinary and the special investigator's reports, failed to meet the minimum requirements of due process as set forth in *Wolff* because the statement failed to protect a prisoner from adverse "collateral consequences" and from unfair administrative action. In the court's opinion, a main defect in the report was the omission of "the essential facts upon which inferences were based." *Id.* at 633.

The Adjustment Committee statements which were constitutionally challenged in another Seventh Circuit case, *Chavis v. Rowe,* 643 F. 2d 1281 (7th Cir. 1981), provide an additional example of an Adjustment Committee summary which fails to comport with the minimum requirements of due process of law. The report at issue in *Chavis* stated: "We recognize and consider the resident[']s statement[,] however [,] we accept the reporting officer[']s charges." That statement, the court held, was constitutionally deficient since it did not specify the evidence relied upon by the reporting officer and failed to give a "clear indication" of why the reporting officer's representations were considered credible while evidence which contradicted his report was not. *Id.* at 1287.

A case involving a sufficiently specific statement of the evidence relied upon by the Committee to satisfy the requirements of due process is *United States ex rel. Houston v. Warden, Stateville Correctional Center,* 635 F. 2d

656, 659 (7th Cir. 1981). The court found constitutionally adequate an Adjustment Committee report which "specifically found that petitioner attempted to steal food off the cart, that he stopped the food cart and attempted to overturn it and that thereby he caused a general disturbance." The court, however, did not avert to the additional requirement set forth in *Wolff* that a prison disciplinary committee give *reasons* for the punishment imposed.[11]

None of the Adjustment Committee reports at issue in these consolidated cases satisfy even the minimum requirements of due process of law. Many of the reports are even less specific than the reports found constitutionally deficient in *Hayes v. Walker, supra;* not only do they not incorporate other reports by reference, as did the statement at issue in *Hayes,* but they simply state that the Committee's findings are based on "all evidence presented," on "all available information," or on the resident's testimony disputing the charges against him and "all other evidence."[12] Other of the Adjustment Committee summaries specify in greater detail the Committee's sources of information, but omit, as did the

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[11]This independent constitutional requirement was recognized by the court in *Craig v. Franke,* 478 F. Supp. 19, 21 (E. D. Wis. 1979) (plaintiff deprived of procedural due process since no reason given for sentence of three days in segregation).

[12]See the Adjustment Committee Summaries finding plaintiffs Redding, Akbar, Woodruff and Armstrong guilty of disciplinary infractions as well as the Adjustment Committee reports regarding plaintiff Tedder which are dated August 10, September 30, and November 18, 1979 and February 2, February 4, and February 17, 1980.

statement in *Hayes*, the "essential facts upon which inferences were based."[13]

In addition, it appears from the Adjustment Committee reports that the Committee generally gives credence to the short written report of a correctional officer, automatically discounting any contradictory information. Nowhere in the Adjustment Committee reports is a reason articulated for giving such credence to a short written report whose accuracy is disputed by the prisoner. The reports accordingly fall short of the standards set by the Seventh Circuit in *Chavis v. Rowe, supra.*

Finally, in all but one the Adjustment Committee summaries, the Committee sets forth no reasons for the nature and amount of punishment imposed other than the implicit reason that the plaintiffs had been found guilty of disciplinary infractions.[14] The punishment which can be imposed by the Adjustment Committee for a disciplinary infraction ranges anywhere from a loss of audio-visual privileges to a revocation of one-year of good conduct time credit. When the Committee fails to articulate

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[13]In essence, most of these Adjustment Committee reports state: We find the prisoner guilty of the offenses charged because the reporting officer has charged him with those offenses. *See e. g.*, the Adjustment Committee reports regarding plaintiff Tedder which are dated November 3, 1979, March 16, 1980, and March 23, 1980. In addition, the foregoing summaries dated March 16, 1980 and March 23, 1980 are incomplete because they specify only some but not all of the sources of information upon which the Committee relied as well as omit essential facts."

[14]In the Adjustment Committee report given to plaintiff Akbar, the reason apparently given for the punishment imposed, a disciplinary job transfer, is that the plaintiff "violated the trust in his law clerk position."

any reasons for the amount of punishment imposed, the prisoner is unprotected from unfair and arbitrary administrative action and may also experience adverse "collateral consequences" because of third parties' speculation regarding why the prisoner received the type of punishment that he did. The plaintiffs, I conclude, have for the reasons stated above, been denied due process through the constitutional inadequacy of the written statements of the Adjustment Committee.

X. *Denial of Requests to Call Witnesses*

Plaintiffs Redding, Akbar, Woodruff, Tedder, and Armstrong allege that their right to due process of law was violated when their requests to call witnesses at the Adjustment Committee hearings were denied. Akbar, Woodruff, and Tedder, however, did not follow the required procedures for requesting the attendance of witnesses at their disciplinary hearings. They were required to fill out and send to the Adjustment Committee the witness request forms at the bottom of the disciplinary reports but did not do so. The materials in support of the motions for summary judgment do not show whether plaintiffs Redding and Armstrong complied with the required procedures.

In *Wolff v. McDonnell*, 418 U. S. 539 (1974), one of the rights discussed by the Supreme Court was the right of the prisoner to call witnesses in his own behalf. The importance of this right was recognized by the court. At same time the Court observed that the right might be limited under certain circumstances because of the need to preserve institutional security or to maintain correctional goals. *Id.* at 566. Specifically, the Court held that

"the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." *Id.* The Court commended the practice of stating the reason for not allowing an inmate to call a particular witness, but held that this practice was not constitutionally required.

The Court of Appeals for the Seventh Circuit interpreting *Wolff* in *Hayes v. Walker*, 555 F. 2d 625 (7th Cir. 1977), held that although a statement of reasons for the denial of a request to call witnesses was not required by the Constitution, some support for the denial had to appear in the record of the disciplinary proceeding. *Id.* at 630.

The disciplinary reports issued to plaintiffs Akbar, Woodruff, and Tedder, which reveal that the plaintiffs did not request witnesses in advance and in writing, represent a sufficient record under *Hayes* to support the curtailment of the plaintiffs' right to call witnesses.[15]

Limiting the right to call witnesses by requiring that witnesses be requested prior to the convening of the Adjustment Committee hearing is a reasonable limitation on the right to call witnesses in the prison disciplinary context. Requiring prior designation of witnesses facilitates the screening by prison officials of witness requests to determine whether calling a witness will imperil institutional security or subvert correctional goals. For

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[15]The original disciplinary report forms are intact and the bottom portion for summoning witnesses is intact and not filled out and torn off.

example, when a correctional officer is requested as a witness, prison officials must be given time to determine whether adjustments can be made in work assignments which will permit the attendance of the official at the disciplinary committee hearing without creating a security risk elsewhere in the institution.[16]

Because plaintiffs Akbar, Woodruff, and Tedder did not follow the required procedure in requesting witnesses at their Adjustment Committee hearing, the defendants' motion for summary judgment on the above plaintiffs' claims based on the denial of their requests to call witnesses will be allowed. Since the court is uncertain whether plaintiffs Redding and Armstrong complied with the required procedures, a question of fact exists on that point which must be resolved at trial. Summary judgment on that point will be denied.

XI. *Absolute Immunity*

The defendants assert that they are entitled to absolute "quasi-judicial" immunity from liability for money damages. In *Butz v. Economou*, 438 U. S. 478 (1978), the Supreme Court addressed the question of when exe-

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[16]Although plaintiff Woodruff claims that Officer Hoss was near the place where the Adjustment Committee was meeting when the plaintiff orally requested that Hoss be called as a witness, the court will not interfere with or perhaps undermine the institutional policy of requiring advanced written requests for witnesses by holding that when a witness is within a certain distance from the place where the Adjustment Committee is meeting the institutional policy is abrogated. In the court's opinion, this refusal to require deviations from the institutional policy is consonant with the Seventh Circuit's admonition that judges should not "unduly interject" themselves into the decisions of prison officials denying prisoners' requests for particular witnesses. *Hayes v. Walker*, 555 F. 2d 625, 630 (7th Cir. 1977).

cutive officials are entitled to absolute, as opposed to qualified, immunity from suit. The Court initially held that as a general rule, executive officials should only be accorded qualified immunity from suit.[17] *Id.* at 407. Only in "exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of the public business" should executive officials be granted absolute immunity from suit, *Id.* at 507-508, and the burden rests on the official seeking absolute immunity to show that his functions necessitate a departure from the general rule of qualified immunity. *Id.* at 506.

In determining whether or not an executive official is entitled to absolute immunity, the Supreme Court indicated in *Butz* that the risk of unconstitutional action by the official must be balanced against the interest in preserving the official's independent judgment when making discretionary decisions. *Id.* at 514. Thus, judges are accorded absolute immunity from suit, not only because they render decisions which are the subject of controversy, but also because safeguards built into the judicial process minimize the chance that judges will commit unconstitutional acts:

> The insulation of the judge from political influence, the importance of precedent in resolving controversies, the adversary nature of the process, and the correctability of error on appeal are just a few of the many checks on malicious action by judges. Advocates are restrained not only by their professional

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[17] In the opinion of the Court, officials with only qualified immunity from suit would not be unduly hampered in the exercise of their independent judgment since liability would result only when the officials knew or should have known that their actions transgressed "clearly established constitutional limits." *Id.* at 506. Liability would not exist for mere mistakes in judgment.

> obligations, but by the knowledge that their assertions will be contested by their adversaries in open court. Jurors are carefully screened to remove all possibility of bias. Witnesses are, of course, subject to the rigors of cross-examination and the penalty of perjury. Because these features of the judicial process tend to enhance the reliability of information and the impartiality of the decisionmaking process, there is a less pressing need for individual suits to correct constitutional error.

Id. at 512.

In *Butz,* the Court held that the federal hearing examiners are entitled to absolute "quasi-judicial" immunity because they perform "adjudicatory functions" and because they are subject to many "restraints" and "safeguards" limiting the risk of unconstitutional action. *Id.* at 514. The basis for granting absolute immunity was the "functional comparability" of these officials to judges. *Id.* at 512.

Adjustment Committee members are not functionally comparable to judges and entitled to absolute immunity. There is no evidence before the court that Adjustment Committees have existent constraints on the exercise of their discretion. In *Mary v. Ramsden,* 635 F. 2d 590, 600 (7th Cir. 1980), the Court of Appeals for the Seventh Circuit rejected the argument that the chairman of a disciplinary committee at a juvenile correctional institution is entitled to absolute immunity, noting that the chairman's function was not comparable to that of a judge but was rather disciplinary in nature. The reasoning of *Mary* extends to members of disciplinary committees at adult correctional institutions. The Adjustment Committee members do not make their decisions in an adversary context, are not bound by precedent, and apparently

are not insulated from political influence. The defendants' motion for summary judgment on all of the plaintiffs' claims for damages will therefore be denied.

IT IS THEREFORE ORDERED that the motion of plaintiffs Redding, Akbar, and Tedder for summary judgment on their claims relating to biased decision making be, and hereby is, allowed except as to Tedder's claim relating to the Adjustment Committee hearing held on November 18, 1979.

IT IS FURTHER ORDERED that the plaintiffs' motion for summary judgment on the claims regarding the constitutional inadequacy of certain Adjustment Committee reports be, and hereby is, allowed.

IT IS FURTHER ORDERED that the motion of plaintiffs' Akbar, Woodruff, and Tedder for summary judgment on their claims regarding the denial of requests for witnesses be, and hereby is, denied.

IT IS FURTHER ORDERED that the motions of the plaintiffs Redding and Armstrong for their claims regarding the denial of requests for witnesses be, and hereby are, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the plaintiffs' claims relating to biased decision makers and the constitutional adequacy of certain Adjustment Committee reports be, and hereby is, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the claims of plaintiffs Akbar, Woodruff, and Tedder regarding the denial of their requests for witnesses be, and hereby is, allowed.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on all of the plaintiffs' claims for damages be, and hereby is, denied. The Clerk is hereby directed to enter judgment accordingly.

ENTER this 1st day of DECEMBER, 1981.

/s/ HAROLD A. BAKER
HAROLD A. BAKER
United States District Judge

Judgment on Decision by the Court CIV 32 (7/63)

Civil Action File No. 79-2313
79-2217, 79-2304, 80-2132, 80-2013,
79-2310, 80-2108 & 80-2152

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS

JAMES REDDING, et al.,

vs.

JAMES FAIRMAN, et al.,

JUDGMENT
(Filed December 3, 1981)

This action came on for (hearing) before the Court, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the motion of plaintiffs Redding, Akbar, and Tedder for summary judgment on their claims relating to biased decision making be, and hereby is, allowed except as to Tedder's claim relat-

ing to the Adjustment Committee hearing held on November 18, 1979.

IT IS FURTHER ORDERED that the plaintiffs' motion for summary judgment on the claims regarding the constitutional inadequacy of certain Adjustment Committee reports be, and hereby is, allowed.

IT IS FURTHER ORDERED that the motion of plaintiffs' Akbar, Woodruff, and Tedder for summary judgment on their claims regarding the denial of requests for witnesses be, and hereby is, denied.

IT IS FURTHER ORDERED that the motions of the plaintiffs Redding and Armstrong for their claims regarding the denial of requests for witnesses be, and hereby are, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the plaintiffs' claims relating to biased decision makers and the constitutional adequacy of certain Adjustment Committee reports be, and hereby is, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the claims of plaintiffs Akbar, Woodruff, and Tedder regarding the denial of their requests for witnesses be, and hereby is, allowed.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on all of the plaintiffs' claims for damages be, and hereby is, denied.

Dated at DANVILLE, ILLINOIS, this 3rd day of December, 1981.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Nalls and against the Defendants Hanson, Noonan, Martinez and Fairman in the sum of $1,000.00 (ONE THOUSAND DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Akbar and against Defendant Hosier in the sum of $3,700.00 (THREE THOUSAND, SEVEN HUNDRED DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,
vs.
CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of Plaintiff Armstrong and against the Defendants Hosier, Hanson, Klaren, and Fairman in the sum of $1,500.00 (ONE THOUSAND FIVE HUNDRED DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Redding and against Defendants Hosier, Marion, Klaren and Fairman in the sum of $220.00 (TWO HUNDRED & TWENTY DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States Dis-

trict Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Tedder and against the Defendants Wheat, Hanson, Des LosSantos, Fiarman, Shehorn, Marion, Johnson, Noonan, Martinez, Mills, Hosier, Foster, Livingston, Klaren, Williams and Poe in the sum of $1.00 (ONE DOLLAR) as nominal damages plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Jones and against the Defendants Wenzelman, Marion, Mills, and Fairman in the sum of $1.00 (ONE DOLLAR) as nominal damages plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

NO. 79-2313
(Consolidated cases)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JAMES REDDING, et al.,
Plaintiffs,

vs.

J. W. FAIRMAN, et al.,
Defendants.

MEMORANDUM ORDER ON DEFENDANTS' POST-TRIAL MOTIONS
(Filed May 25, 1982)

The defendants advance several grounds in their post-trial motions demanding a new trial or judgment notwithstanding the verdict. They claim error on the part of the court in granting summary judgment in behalf of the plaintiffs on the issue of the impartial decision maker and the issue of the inadequate statements supporting the decisions

of the institutional adjustment committee. Those points are addressed in the court's order granting summary judgment.

The post-trial motions raise two basic points which the court feels should be addressed here. First, the limitation placed on the defendants in introducing evidence in support of the defense of justification and second, the necessity on the part of the plaintiffs to exhaust existing administrative remedies before applying to the court for relief under 42 U. S. C. § 1983.

On the first point the defendants assert that the court should have permitted the defendants to go outside the record of the proceedings before the prison adjustment committee and offer evidence as to the conduct and character of the plaintiffs in support of the defense of justification. To support that position the defendants rely on *Carey v. Piphus*, 435 U. S. 247 (1977). The reliance is misplaced. *Carey v. Piphus* holds that in defense of a denial of due process a defendant may prove justification of his actions and thereby limit the plaintiff to nominal damages of One Dollar. *Piphus*, however, does not address the question of how a defendant would go about proving justification.

Hayes v. Thompson, 637 F. 2d 483 (7th Cir. 1980) addresses precisely the question of how a defendant would go about proving justification. In *Hayes v. Thompson* the court rejected attempts by administrative officials to go outside the administrative record in an attempt to justify the administrator's denial of witnesses and statement of reasons for disciplinary action in prison administration hearings. The court said:

> Such post-hoc rationalizations are to be viewed with suspicion, and are not a proper basis for meaningful judicial review. Support in the administrative record is necessary to protect the prisoner from arbitrary official action, and is a minimum requirement of due process. Moreover, an adequate record is essential from the inmate's perspective as well. If judicial review is to be knowledgeably sought by a prisoner, he must be able to discern when error has been committed and review might be successfully pursued. The administrative record provides the prisoner's source of knowing the basis for a disciplinary decision and allows him to contest erroneous or insufficient support. If subsequent testimony were permitted to constitute the necessary support for disciplinary action, it would produce the anomalous result of requiring a prisoner to initiate and bring to trial a civil rights action in order to discover what underlay the decision.

In light of the holding in *Hayes v. Thompson* it is clear that the defendants should not have been permitted to offer evidence that was not before the institutional adjustment committee in justification of the acts of that committee.

The second point in the defendants' post-trial motion is that this court, following the rationale of *Secret v. Brierton*, 584 F. 2d 823 (7th Cir. 1978), should require the plaintiffs to exhaust administrative remedies to rectify errors in procedures before the institutional adjustment committee in advance of bringing suit in this court. The defendants argue *Parratt v. Taylor*, 451 U. S. 527 (1981) in support of that position. *Parratt v. Taylor* holds that an action for damages for loss of personal property resulting from the conduct of a state employee will not lie where the state has afforded an adequate remedy to recover for the loss under state law. *Parratt v. Taylor* does not overrule

Monroe v. Pape, 365 U. S. 167 (1961) and the second contention of the defendants in their post-trial motions is without merit.

IT IS THEREFORE ORDERED that the post-trial motions of the defendants for a new trial or in the alternative for judgment notwithstanding the verdict are hereby denied.

ENTER this 25th day of May, 1982.

/s/ Harold A. Baker
United States District Judge